

The Honorable Ricardo S. Martinez

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

In re MCG Health Data Security Issue
Litigation

NO. 2:22-CV-00849-RSM-DWC

**FINAL APPROVAL ORDER AND
JUDGMENT**

[PROPOSED] FINAL APPROVAL ORDER AND JUDGMENT

Before the Court are Plaintiffs' Unopposed Motion for Final Approval of Class Action Settlement (the "Final Approval Motion")¹ (Dkt. 90), and Plaintiffs' Unopposed Motion for Attorneys' Fees, Costs, Expenses, and Service Awards (the "Fees, Costs, and Service Awards Motion") (Dkt. 88). Having fully considered the issues, the Court hereby **GRANTS** both the Final Approval Motion and the Fees, Costs, and Service Awards Motion and orders as follows:

Pursuant to the notice requirements set forth in the Settlement Agreement and in the Court's May 5, 2024 Order Granting Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement ("Preliminary Approval Order"), the Settlement Class was notified of the terms of the proposed Settlement, of the right of members of the Settlement Class to opt-out or object, and of the right of members of the Settlement Class to be heard at a Final Approval Hearing to determine, *inter alia*: (1) whether the terms and conditions of the Settlement

¹ The terms of the settlement are set forth in a Settlement Agreement with accompanying exhibits attached as Exhibit 1 to the Declaration of Jason T. Dennett in Support of Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement (Dkt. 83-1) (the "Settlement").

1 Agreement are fair, reasonable, and adequate for the release of the claims contemplated by the
 2 Settlement Agreement; and (2) whether judgment should be entered dismissing this Action with
 3 prejudice.

4 A Final Fairness Hearing was held on October 9, 2024. Prior to the Final Fairness
 5 Hearing, on August 15, 2024, Plaintiffs filed the Fees, Costs, and Service Awards Motion, and
 6 on September 25, 2024, Plaintiffs filed the Final Approval Motion. Counsel for the parties
 7 appeared in person and presented arguments in support of final approval of the Settlement.

8 Having heard the presentation of Class Counsel and Defendant's counsel, having
 9 reviewed all of the submissions presented with respect to the proposed Settlement, having
 10 considered the Fees, Costs, and Service Awards Motion, and having reviewed the materials in
 11 support thereof, for the reasons stated on the record during the Final Fairness Hearing and for
 12 good cause appearing,

13 **IT IS HEREBY ORDERED** that:

14 1. The Final Approval Motion and the Fees, Costs, and Service Awards Motion are
 15 **GRANTED** as stated herein.

16 2. The Settlement, including the exhibits attached thereto, is approved as fair,
 17 reasonable, and adequate, in accordance with Rule 23(e) of the Federal Rules of Civil Procedure.
 18 This Final Approval Order and Judgment incorporates by reference the definitions in the
 19 Settlement Agreement, and all capitalized terms used herein shall have the same meaning as set
 20 forth in the Settlement Agreement unless otherwise set forth in this Order.

21 3. Jurisdiction: The Court has jurisdiction over the subject matter of this Action and
 22 over all claims raised therein and all parties thereto, including the Settlement Class.

23 4. The Settlement is Fair, Reasonable, and Adequate: The Court finds that the
 24 Settlement was entered into by the parties for the purpose of settling and compromising disputed
 25 claims, and is fair, reasonable, and adequate, and in the best interests of all those affected by it.
 26 The Settlement Agreement was entered in good faith following informed, arm's-length

1 negotiations conducted by experienced counsel with the assistance of a well-respected mediator,
2 and is non-collusive.

3 5. Class Certification for Settlement Purposes Only: For purposes of the Settlement
4 only, the Court finds and determines that the Action may proceed as a class action under Rule
5 23(b)(3) of the Federal Rules of Civil Procedure, and that: (a) the Settlement Class certified
6 herein is sufficiently numerous, as it includes approximately 1,100,000 people, and joinder of all
7 such persons would be impracticable; (b) there are questions of law and fact that are common to
8 the Settlement Class, and those questions of law and fact common to the Settlement Class
9 predominate over any questions affecting any individual Settlement Class Member; (c) the claims
10 of the Plaintiffs are typical of the claims of the Settlement Class they seek to represent for
11 purposes of settlement; (d) a class action on behalf of the Settlement Class is superior to other
12 available means of adjudicating this dispute; and (e) as set forth below, Plaintiffs and Class
13 Counsel are adequate representatives of the Settlement Class. The proposed Class satisfies all of
14 Rule 23's requirements, so the Court will finally certify the Settlement Class. Defendant retains
15 all rights to assert that this action may not be certified as a class action, other than for settlement
16 purposes.

17 6. Class Definition: The Court hereby certifies, for settlement purposes only, a
18 Settlement Class defined as follows:

19 All United States residents whose personally identifiable information (PII) and/or
20 protected health information (PHI) was accessed or acquired during the MCG data
21 security incident that MCG discovered on or about March 25, 2022.

22 Excluded from the Settlement Class are the Court and all members of the Court's staff, and
23 persons who timely and validly request exclusion from the Settlement Class.

24 7. Class Notice: The approved Notice Program provided for a copy of the Short
25 Form Notice to be mailed to all members of the Class who have been identified by Defendant
26 through its records with a mailing address, and additional notice via the Long Form Notice posted

1 on the Settlement Website for those whose mailing addresses were not available within
 2 Defendant's records. For mailed notices returned with a forwarding address, the Settlement
 3 Administrator mailed Short Form Notices to the forwarding addresses. The Settlement
 4 Administrator maintained the Settlement Website, which provided information about the
 5 Settlement, including copies of relevant Court documents, the Settlement Agreement, the Long
 6 Form Notice, and the Claim Form. The Settlement Administrator also maintained a toll-free help
 7 line with interactive voice response and FAQs to address Settlement Class Members' inquiries.

8 8. Findings Concerning Notice: The Court finds and determines that the Notice
 9 Program, preliminarily approved on May 1, 2024, and implemented on May 31, 2024, constituted
 10 the best notice practicable under the circumstances, constituted due and sufficient notice of the
 11 matters set forth in the notices to all persons entitled to receive such notices, and fully satisfies
 12 the requirements of due process, Rule 23 of the Federal Rules of Civil Procedure, 28 U.S.C. §
 13 1715, and all other applicable laws and rules. The Notice Program involved direct notice via mail
 14 and the Settlement Website providing details of the Settlement, including the benefits available,
 15 how to exclude or object to the Settlement, when the Final Fairness Hearing would be held, and
 16 how to inquire further about details of the Settlement. The Court further finds that all of the
 17 notices are written in plain language and are readily understandable by Settlement Class
 18 Members. The Court further finds that notice has been provided to the appropriate state and
 19 federal officials in accordance with the requirements of the Class Action Fairness Act, 28 U.S.C.
 20 § 1715, drawing no objections.

21 9. Appointment of Class Representatives: The Court appoints Diana Saiki, Kenneth
 22 Hensley, Leo Thorbecke, Cynthia Strecker, Michael Price, Blanca Garcia, Joanne Mullins,
 23 Marjorita Dean, Kelly Batt, Jay Taylor, Shelley Taylor, and Gaye Ictech as Class Representatives
 24 of the Settlement Class pursuant to Federal Rules of Civil Procedure Rule 23(a).

25 10. Appointment of Class Counsel: The Court appoints Plaintiffs' attorneys Jason T.
 26 Dennett of Tousley Brain Stephens PLLC, Gary M. Klinger of Milberg Coleman Bryson Phillips

1 Grossman, PLLC, and Adam Polk of Girard Sharp LLP as Settlement Class Counsel.

2 11. Exclusion from Class: Any person falling within the definition of the Settlement
3 Class had the opportunity, upon request, to be excluded or “opt out” from the Class. The 125
4 persons who opted to be excluded from the Settlement shall have no rights under the Settlement,
5 shall not share in the distribution of the Settlement benefits, and shall not be bound by the
6 Settlement or any final judgment entered in this Action.

7 12. Objections and Appearances: Any Settlement Class Member had the opportunity
8 to enter an appearance in the Action, individually or through counsel of their own choice. Any
9 Settlement Class Member also had the opportunity to object to the Settlement and the attorneys’
10 fees and expenses award and to appear at the Fairness Hearing and show cause, if any, why the
11 Settlement should not be approved as fair, reasonable, and adequate to the Class, why a final
12 judgment should not be entered thereon, why the Settlement should not be approved, or why the
13 attorneys’ fees and expenses award should not be granted, as set forth in the Court’s Preliminary
14 Approval Order. There were no objections filed in this case to either the Settlement or the
15 attorneys’ fees and expenses award. Any Settlement Class Member who did not make their
16 objections in the manner and by the date set forth in § I of the Court’s Preliminary Approval
17 Order (Dkt. 86) shall be deemed to have waived any objections and shall be forever barred from
18 raising such objections in this or any other action or proceeding, absent further order of the Court.

19 13. Release: Upon the entry of this Order, the Class Representatives and all
20 Settlement Class Members, whether or not they have filed a Claim Form within the time provided
21 or receive an award, shall be permanently enjoined and barred from initiating, asserting or
22 prosecuting any claims or causes of action against Defendant and the Released Parties based on,
23 relating to, concerning, or arising from the Data Security Incident or that could have been brought
24 in this Litigation, and the Class Representatives and all Settlement Class Members conclusively
25 shall be deemed to have fully, finally, and forever released any and all such Released Claims.

26 14. Attorneys’ Fees and Costs: Class Counsel moved for an award of attorneys’ fees

1 and litigation expenses on August 15, 2024, which Defendant did not oppose. Class Counsel
 2 requested \$2,930,000 in attorneys' fees and litigation costs. The Court finds that Class Counsel's
 3 request for attorneys' fees and costs is fair and reasonable, particularly in light of the results
 4 achieved through this litigation as well as the contingent nature of the fee award. Accordingly,
 5 Class Counsel are awarded attorneys' fees and litigation costs in the amount of \$2,930,000. This
 6 amount shall be paid from the Settlement Fund in accordance with the terms of the Settlement.

7 15. Service Awards: Plaintiffs moved for their Service Awards on August 15, 2024,
 8 which Defendant did not oppose. Plaintiffs each requested a service award of \$2,500. The Court
 9 finds that Plaintiffs' requests for Service Awards are fair and reasonable, particularly in light of
 10 the results obtained for the Settlement Class as a direct result of Plaintiffs' willingness to act as
 11 class representatives and assist Class Counsel in this litigation. Accordingly, Plaintiffs are each
 12 awarded a Service Award in the amount of \$2,500. These amounts shall be paid from the
 13 Settlement Fund in accordance with the terms of the Settlement.

14 16. Payment to Settlement Class Members: The Claims Administrator shall make all
 15 required payments from the Settlement Fund in accordance with the amounts and the times set
 16 forth in the Settlement Agreement, including all payments to Settlement Class Members who
 17 submitted an approved claim, for the attorneys' fees and costs, for the service awards, and for all
 18 settlement administration costs.

19 17. Funds Held by Settlement Administrator: All funds held by the Settlement
 20 Administrator shall be deemed and considered to be *in custodia legis* of the Court and shall
 21 remain subject to the jurisdiction of the Court until such time as the funds are distributed pursuant
 22 to the Settlement or further order of the Court.

23 18. Dismissal with Prejudice: The above-captioned Action is hereby **DISMISSED**
 24 **WITH PREJUDICE**. Except as otherwise provided in this Final Approval Order and Judgment,
 25 the parties shall bear their own costs and attorneys' fees. Without affecting the finality of the
 26 Judgment hereby entered, the Court reserves jurisdiction over the implementation of the

1 Settlement, including enforcement and administration of the Settlement Agreement.

2 19. Plaintiffs' Unopposed Motion for Final Approval of Class Action Settlement
3 (Dkt. 90) and Unopposed Motion for Attorneys' Fees, Costs, Expenses, and Service Awards
4 (Dkt. 88) are **GRANTED** and Final Judgment is hereby entered.

5 20. The Clerk is directed to **CLOSE THIS CASE** and **TERMINATE** any pending
6 motions as **MOOT**.

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8 **DONE AND ORDERED** in Seattle, WA on this 9th day of October, 2024.

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11 RICARDO S. MARTINEZ
12 UNITED STATES DISTRICT JUDGE
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